

State of South Dakota

EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

751Q0246

HOUSE BILL NO. 1095

Introduced by: Representatives Hunt, Burg, Dennert, Dreyer, Faehn, Hoffman, Kirkeby, Krebs, Lucas, Moser, Nygaard, Pitts, Rausch, Rave, Street, Tidemann, and Verchio and Senators Hansen (Tom), Dempster, Gant, Garnos, Gray, Hanson (Gary), Knudson, Maher, Merchant, Nesselhuf, Olson (Russell), Peterson, Rhoden, and Vehle

1 FOR AN ACT ENTITLED, An Act to include the improper influence of a real estate appraisal
2 by a real estate licensee to the acts constituting unprofessional conduct.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-21A-71 be amended to read as follows:

5 36-21A-71. Unprofessional conduct includes the following:

- 6 (1) Violating any provisions of this chapter or any rule promulgated by the commission;
- 7 (2) Making a material false statement in the licensee's application for a license or in any
8 information furnished to the commission;
- 9 (3) Making any substantial and willful misrepresentation with reference to a transaction
10 which is injurious to any party;
- 11 (4) Making any false promise or advertisement of a character such as to influence,
12 persuade or induce a party to a transaction to the party's injury or damage;
- 13 (5) Failure to account for or to remit, within a reasonable time, any moneys coming into



1 the licensee's possession belonging to others, commingling funds of others with the
2 licensee's own, failing to keep the funds of others in an escrow or trust account with
3 a bank or other recognized depository in this state, or failing to keep records relative
4 to the deposit, which shall contain any information as may be prescribed by this
5 chapter or the rules promulgated by the commission pursuant to chapter 1-26 relative
6 thereto;

7 (6) Being convicted, or pleading guilty or nolo contendere before a court of competent
8 jurisdiction in this or any other state, or before any federal court, of a misdemeanor
9 involving moral turpitude or a felony arising under the laws of this state or under the
10 laws of the United States or any other state that would be a misdemeanor involving
11 moral turpitude or a felony under the laws of this state;

12 (7) Claiming or taking any secret or undisclosed amount of compensation or the failure
13 of a licensee to reveal to the licensee's principal or employer the full amount of
14 compensation in connection with any acts for which a license is required under this
15 chapter;

16 (8) Failing or refusing upon demand to produce any document, book, or record in the
17 licensee's possession or under the licensee's control, concerning a transaction under
18 investigation by the commission;

19 (9) Offering real property for sale or lease without the knowledge and prior written
20 consent of the owner or the owner's authorized agent or on any terms other than those
21 authorized by the owner or the owner's authorized agent;

22 (10) Any violation of federal or state fair housing requirements;

23 (11) Failing or refusing upon demand to furnish copies including reproductions of any
24 document pertaining to any transaction dealing with real estate to a person whose

1 signature is affixed thereto;

2 (12) Paying compensation or commission in connection with a transaction to any person
3 who is not licensed under this chapter;

4 (13) Failing to disclose to an owner in writing the licensee's intention or true position if
5 the licensee directly or indirectly through a third party purchases for himself or
6 herself or acquires or intends to acquire any interest in or any option to purchase
7 property which has been listed with the licensee's office for sale or lease;

8 (14) Failure by a broker to deliver to the seller in every real estate transaction, at the time
9 the transaction is consummated, a complete, detailed closing statement, showing all
10 of the receipts and disbursements for the seller; also failure to deliver to the buyer a
11 complete statement showing all money received in the transaction from the buyer and
12 how and for what the same was disbursed, and to retain true copies of the statements
13 in the broker's files; also failure to date and sign the closing statement;

14 (15) Any other conduct which constitutes dishonesty or fraudulent conduct, whether
15 arising within or without the pursuit of the licensee's license privilege;

16 (16) Accepting employment or compensation for appraising real estate contingent upon
17 reporting a predetermined value or issuing an appraisal report on real estate in which
18 the licensee has an undisclosed interest;

19 (17) The revocation or suspension of any other license held by a person licensed under
20 this chapter. Any other license includes being licensed as an attorney; real estate
21 salesman, broker or appraiser; insurance licensee; securities licensee; and other
22 similar regulated occupation, trade or profession;

23 (18) Using, proposing the use, agreeing to the use or knowingly permitting the use of two
24 or more contracts of sale, earnest money agreements or loan applications, one of

1 which is not made known to the prospective lender or the loan guarantor, to enable
2 the purchaser to obtain a larger loan than the true sales price would allow or to enable
3 the purchaser to qualify for a loan which the purchaser otherwise could not obtain;

4 (19) Failing to promptly give a copy of an offer to purchase to the purchaser;

5 (20) Failing to promptly give the seller every written offer to purchase obtained;

6 (21) Upon obtaining an acceptance of the offer signed by the seller, failing to promptly
7 give a copy of it to both purchaser and seller;

8 (22) Failing to make certain that all of the terms and conditions of the transaction are
9 included in the offer to purchase;

10 (23) Giving a title opinion upon the merchantability of the title to property in any
11 transaction in which the licensee participated;

12 (24) Preparing any legal document, giving any legal advice, or otherwise engaging in the
13 practice of law. Preparation of the following documents is exempt from this
14 provision:

15 (a) Listing agreements or extensions;

16 (b) Offers to purchase;

17 (c) Offers to lease;

18 (d) Acceptances; and

19 (e) Closing statements;

20 (25) Permitting the use of a broker's license to enable licensed salesmen to establish and
21 carry on a real estate brokerage business if the broker has only insignificant control
22 of the affairs of the business conducted;

23 (26) Taking a net listing whereby a licensee agrees to take as compensation the proceeds
24 of a sale over and above the selling price agreed in the listing contract;

- 1 (27) Failing to put in writing all guarantees of sale and other guarantees made by a
2 licensee to the person listing the property for sale;
- 3 (28) Failing to put in writing any agreement to furnish or sell a warranty;
- 4 (29) Attempting to solicit or attempting to secure listings without first advising the owner
5 that the licensee is a licensee and is engaged in real estate brokerage;
- 6 (30) Failing to protect and promote the interests of the client whom the licensee has
7 undertaken to represent to the best of the licensee's ability;
- 8 (31) Failing to deal fairly with all parties to a transaction;
- 9 (32) Committing any act constituting or demonstrating bad faith, incompetency or
10 fraudulent dealings;
- 11 (33) Using the licensee's position to gain undue influence over a prospective buyer, seller,
12 landlord, or tenant, using the licensee's position to coerce a buyer, seller, landlord,
13 or tenant, or using duress on a buyer, seller, landlord, or tenant;
- 14 (34) Issuing an insufficient funds check;
- 15 (35) In a business enterprise that requires licensing by the commission, associating in any
16 manner with another person who has had a license suspended or revoked by action
17 of the commission while the suspension or revocation is in effect. This prohibition
18 includes a corporation, a partnership, an association, a single proprietorship, and an
19 employer-employee relationship. A licensee may act as an agent in a real estate
20 transaction for a person who has had a license suspended or revoked by the
21 commission if the transaction is one that would occur in the ordinary course of the
22 licensee's business;
- 23 (36) Buying, selling, leasing, or exchanging real property under the auspices of a
24 partnership or corporation of which the licensee owns an interest if it is indicated that

the purchase or sale is being made by a private party not licensed by the real estate commission;

(37) Making a listing contract or any other contract with the licensee's principal which allows the licensee to purchase or lease the listed property and charge a commission thereon without obtaining the written consent of the principal to such provision. This written consent shall be in addition to the signing of any listing contract;

(38) Accepting a note or other nonnegotiable instrument or anything of value not readily negotiable as earnest money on a contract or offer to purchase without the written permission of the licensee's principal; ~~or~~

(39) Selling, buying, exchanging or leasing real property in a manner indicating that the licensee is not licensed under this chapter; or

(40) Improperly influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal by coercion, extortion, or bribery; withholding or threatened withholding of payment of an appraisal fee; conditioning the payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached; requesting the appraiser report a predetermined opinion, conclusion, or valuation or the desired valuation of any person; or any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, and impartiality. This subdivision does not apply to the following acts:

(a) Requesting an appraiser to consider additional, appropriate property information;

(b) Providing further detail, substantiation, or explanation of the appraiser's value conclusion;

(c) Correcting errors in the appraisal report;

- 1 (d) Withholding payment of an appraisal fee based upon a bona fide dispute
2 regarding the appraiser's compliance with the appraisal standards adopted by
3 the Department of Revenue and Regulation;
- 4 (e) Retaining a real estate appraiser from panels or lists on a rotating basis; or
- 5 (f) Supplying the appraiser with information the appraiser is required to analyze
6 under the appraisal standards adopted by the Department of Revenue and
7 Regulation such as agreements of sale, options, or listings of the property to
8 be valued.